Filed 9/27/02 Vallejo Community Service Center v. City of Vallejo CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

VALLEJO COMMUNITY SERVICE CENTER, Plaintiff and Appellant, v. CITY OF VALLEJO, Defendant and Respondent.	A095845 (Solano County Super. Ct. No. L011584)

This case presents the question of whether a city ordinance restricting bingo licenses to entities that have maintained offices within city limits for at least two years violates equal protection. We conclude that it does. Accordingly, although we also conclude that the city is not bound by estoppel, we reverse the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY[1]

California law allows cities and counties to provide for bingo games for charitable purposes. (Cal. Const., art. IV, § 19, subd. (c); Pen. Code, § 326.5.) Pursuant to this authorization, the City of Vallejo adopted a bingo ordinance.

In 1996, plaintiff Vallejo Community Service Center (VCSC) applied for a permit to operate a bingo hall in Vallejo. VCSC's application was considered at a hearing

---

[1] Our review of the facts was made more difficult by the inadequate briefs submitted by both Vallejo Community Service Center and the City of Vallejo. We direct the parties' attention to California Rules of Court, rule 14(a)(1)(C), which requires a brief on appeal to "support any reference to a matter in the record by a citation to the record."

before the City of Vallejo Planning Commission on August 19, 1996. One of the owners of VCSC, Thomas Ross, spoke at the hearing. He told the planning commission that four charities had signed letters of intent to operate bingo in VCSC's hall. He did not indicate that any of the charities were located outside of Vallejo. Ross explained that VCSC expected to have five or six charities carry out bingo games at the hall. He also explained in a written statement to the planning commission that VCSC was in contact with other Vallejo groups and expected commitments from at least one other organization shortly.

Members of the public testified against the proposed use permit and expressed concern about the effect the new bingo hall would have on local charities that already carried out bingo games. Others raised concerns about the effects the proposed permit would have on parking and surrounding businesses. The planning commission denied the permit on the ground that the use would not be compatible with adjacent uses.[2]

VCSC appealed the planning commission's decision to the Vallejo City Council. The city council found the use permit would be compatible with adjacent uses, and granted the permit on October 8, 1996.

VCSC began operating the bingo hall. It signed a 10-year lease and made improvements to the facility. In total, its investment appears to have exceeded $380,000. VCSC also entered into lease agreements with charitable organizations that wished to use the hall for bingo. The terms of the agreements required the organizations to pay VCSC a fixed amount of rent per session. According to VCSC, it needed the charities to operate nine sessions per week in order for VCSC to repay its debt within three years. Pursuant to the City of Vallejo bingo ordinance, charities that wished to conduct bingo games had to secure a license from the City.

In February 1998, the City of Vallejo imposed a moratorium on the issuance of new bingo licenses. The purpose of the moratorium, as expressed in the city council

---

[2] The trial court sustained the City's objections to Ross's written statement to the planning commission and to the minutes of the hearing before the planning commission. (See footnote 6 below.)

resolution passing it, was to allow staff time to prepare an amendment to Vallejo's bingo ordinance "to limit the issuance of bingo licenses to non-profit organizations that primarily serve the Vallejo community and do business in the city." The resolution recited that the objective of the bingo ordinance was "to benefit local non-profit organizations and their programs for the community."

In September 1998, the City of Vallejo amended its bingo ordinance. Under the amended ordinance, in order to obtain a bingo license, an organization must verify that it had maintained its headquarters or an administrative center in Vallejo for at least two years prior to application; verify that it had provided charitable services in Vallejo for at least two years; and commit to using at least 70 percent of the profits from bingo games for charitable purposes in Vallejo.

VCSC claimed below that, as a result of the moratorium, the tenants of the bingo hall knew it would be difficult for VCSC to enforce their leases because vacancies in the hall would be difficult to fill. As a result, according to VCSC, several of the charities reduced their rent payments, reduced the number of bingo sessions they operated, ceased bingo operations altogether, fell behind on rent payments, or failed to renew their leases, resulting in economic losses to VCSC. According to VCSC, after the ordinance was passed, the City denied the application of at least one of the hall's tenants for renewal of its bingo license. VCSC also claims that it became impossible to attract new tenants, that it fell behind on its rent, and that it ultimately ended bingo operations.[3]

VCSC filed an action against the City of Vallejo. It sought a writ of mandate, damages for inverse condemnation and violation of Title 42 United States Code section 1982, and declaratory and injunctive relief. The trial court denied the petition for writ of mandate. VCSC then brought a motion for summary judgment on the theory that the

---

[3] The court below ruled most of this evidence was irrelevant and hence inadmissible. VCSC challenges the trial court's exclusion of evidence. As discussed below, we do not reach the question of whether the court's evidentiary rulings were erroneous. We recite these facts here solely to explain the claims that VCSC made below.

Vallejo bingo ordinance violated the constitutional guarantee of equal protection. The trial court denied the motion. The parties stipulated to entry of judgment, and this appeal ensued.

II. DISCUSSION

A. The Trial Court Correctly Ruled the City Was Not Bound by Estoppel

In its petition for writ of mandate, VCSC argued it had been deprived of vested rights based in part upon an estoppel theory. VCSC here challenges the trial court's determination that the City was not bound by equitable estoppel. We agree with the trial court's conclusion.

VCSC's estoppel theory can be summarized as follows: VCSC was counting on the availability of charities from surrounding communities when it sought permission to open the bingo hall, so its partners examined the Vallejo bingo ordinance and satisfied themselves that the City of Vallejo welcomed outside charities. At VCSC's request, the City also reviewed the bingo ordinance, and adopted an amendment conforming the ordinance to state law exempting nonprofits from expense limits. According to VCSC, the City had a history of granting permits to non-Vallejo charities, the City knew at least one non-Vallejo charity had signed a lease with VCSC, and the City was aware that local organizations were opposed to the new bingo hall. At no time in connection with the permit or evaluation of the bingo ordinance did the City either indicate it believed the objectives of the bingo ordinance were not being met or suggest it intended to limit bingo licenses to Vallejo entities. Based upon all of these facts, and upon VCSC's reliance on the bingo ordinance in existence at the time the permit was issued, VCSC contends the City is now bound by estoppel.[4]

---

[4] VCSC did not plead estoppel in its original or amended petition and complaint, instead relying on the theory that it had been deprived of its vested rights. The court below analyzed the issue of vested rights partially in terms of whether there was an estoppel. VCSC argues on appeal that this case does not fit within the cases involving vested rights, that the case should rather be analyzed in terms of equitable estoppel, and that the trial court's analysis of the issue of estoppel was erroneous. The City does not contend the issue of equitable estoppel is not properly before this court.

The existence of estoppel is "a question of fact to be pleaded and proved." (*Aetna Casualty & Surety Co. v. Humboldt Loaders, Inc.* (1988) 202 Cal.App.3d 921, 930; see also *California Sch. Employees Assn. v. Jefferson Elementary Sch. Dist*. (1975) 45 Cal.App.3d 683, 693.) The standard for applying estoppel against the government has long been established in California. "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497.)

The elements of estoppel against a private party, which must be established to bind the government by estoppel, are also well settled. " 'The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' " (*Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 975, quoting *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725; see also *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 794; *City of Long Beach v. Mansell*, *supra*, 3 Cal.3d at p. 489.)

The record does not show that these elements have been met. In particular, VCSC does not point us to any evidence that the Vallejo City Council knew VCSC needed to rely on organizations outside Vallejo to fill its bingo hall. The record seems to indicate the opposite. Before the planning commission, VCSC mentioned four charities that

---

At oral argument, counsel for VCSC raised for the first time the argument that the City's actions created a quasi-contractual promissory estoppel. Because this theory was neither pled nor briefed, either below or on appeal, we decline to address it.

intended to operate bingo games in the hall, but did not indicate that any of them were based outside of Vallejo. One of VCSC's owners informed the planning commission that he was in contact with "other Vallejo groups" regarding using the hall for bingo games. In its letter to the members of the city council requesting an appeal from the planning commission's denial of the use permit, VCSC stated: "Numerous local charities would profit from the opening of this hall." The letter listed the four charities previously mentioned to the planning commission, and stated that two others were seriously considering bingo at the hall: the Police Activities League and the American Canyon Boys and Girls Club. The letter noted that the American Canyon Boys and Girls Club serves Vallejo youth. However, the letter went on to state that "[t]he applicant [is] committed to only having charities at the hall *who serve Vallejo residents*" and that "[t]his project will provide *Vallejo non-profit organizations* with a bingo hall that will be competitive with bingo halls [elsewhere in the region]." (Italics added.)[5] In sum, there is no evidence showing the first element of estoppel: that the City was " 'apprised of the facts,' " i.e., that the City knew VCSC needed to rely on organizations outside Vallejo to develop a viable bingo hall.[6]

VCSC contends the trial court applied the wrong legal standard in deciding the existence of estoppel (requiring a showing of "misconduct") and, as a result, the trial court erroneously excluded relevant evidence. Whether or not we agree with the legal framework the trial court applied, none of the evidence VCSC sought to introduce would have established that the elements of estoppel were present. In particular, the excluded evidence could not have established that the City of Vallejo knew VCSC could not

---

[5] VCSC reiterated this point in a letter written by its attorney to the Mayor of Vallejo, which stated, "[o]ur groups reflect the diversity of Vallejo." (Emphasis omitted.)

[6] As noted above, the trial court sustained the City's objection to the letter to the planning commission and the minutes of the planning commission hearing. It also appears to have sustained an objection to the letter sent to the city council. VCSC claims that the trial court erred in excluding evidence. We discuss these excluded documents merely to show that, even if the trial court had admitted them, our conclusions would be the same.

operate its bingo hall successfully if it could not attract organizations located outside of Vallejo.

Accordingly, we conclude that the trial court did not err in finding that the requirements for applying estoppel against the government were not satisfied.[7]

B. The Bingo Ordinance Violates the Guarantee of Equal Protection[8]

VCSC contends that the amendments to Vallejo's bingo ordinance run afoul of the constitutional guarantee of equal protection. According to VCSC, the provision limiting bingo licenses to organizations that have maintained an office in Vallejo for at least two years is not rationally related to a legitimate governmental interest.[9] We agree.

Equal protection challenges are normally evaluated under one of two standards. The first, known as the "rational relationship" test, is " 'the basic and conventional standard for reviewing economic and social welfare legislation in which there is "discrimination" or differentiation of treatment between classes or individuals. It manifests restraint by the judiciary in relation to the discretionary act of a co-equal branch of government; in so doing it invests legislation involving such differentiated treatment with a presumption of constitutionality and "requir[es] merely that distinctions

---

[7] In addition, it is settled that "the theory of estoppel is invoked as a *defensive* matter to prevent the party estopped from alleging or relying upon some fact or theory that would otherwise permit him to recover something from the party asserting estoppel." (*Green v. Travelers Indemnity Co*. (1986) 185 Cal.App.3d 544, 555, italics added.) Although VCSC has not articulated precisely what it claims the City was estopped from doing, it seems to be trying to assert the doctrine of estoppel to invalidate the amendments to the bingo ordinance. Because we have concluded that VCSC has not established the elements of estoppel, we need not decide whether VCSC's proposed application of estoppel would violate the rule that estoppel may be invoked only defensively.

[8] The City argued below that VCSC did not have standing to assert the rights of nonresident organizations to bingo licenses. The trial court ruled that VCSC had standing. The City does not challenge that finding on appeal.

[9] A corporation is a "person" within the meaning of the Fourteenth Amendment, and hence is entitled to the equal protection of the laws. (*National General Corp. v. Dutch Inns of America, Inc.* (1971) 15 Cal.App.3d 490, 495, fn. 3.)

drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose." ' " (*Warden v. State Bar* (1999) 21 Cal.4th 628, 641, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 16.)

A more stringent test is applied in cases involving "suspect classifications" or affecting "fundamental interests." Using this "strict scrutiny" standard, " ' "the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose." ' " (*Warden v. State Bar, supra*, 21 Cal.4th at p. 641, quoting *D'Amico v. Board of Medical Examiners*, *supra,* 11 Cal.3d at p. 17, italics omitted.)

The City argues that we should apply the rational relationship test to Vallejo's bingo ordinance, and VCSC does not contend otherwise. It is true that durational residency requirements are frequently subjected to strict scrutiny. (*Wall v. Municipal Court* (1990) 223 Cal.App.3d 247, 249, fn. 2 ["Durational residency requirements are subject to the strict scrutiny of the courts because they impact several fundamental rights."], citing *Shapiro v. Thompson* (1969) 394 U.S. 618, 634, *Johnson v. Hamilton* (1975) 15 Cal.3d 461, and *Thompson v. Mellon* (1973) 9 Cal.3d 96.) However, the California Supreme Court has concluded that where a durational residency requirement does not deter migration or penalize a person for exercising the right to travel, strict scrutiny is unnecessary. (*Adams v. Superior Court* (1974) 12 Cal.3d 55, 62 & 63, fn. 5.) In doing so, the court distinguished United States Supreme Court cases in which a durational residency requirement impinged on the right to travel because the regulations in question denied short-term residents either the means to address basic needs or very substantial rights. (*Id.* at pp. 61-62, citing *Shapiro v. Thompson*, *supra*, 394 U.S. 618 [funds necessary for subsistence], *Dunn v. Blumstein* (1972) 405 U.S. 330 [right to vote], and *Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250 [medical care].) The court also distinguished its own cases invalidating durational residency requirements for voting and candidacy for public office, since those cases involved fundamental rights. (*Adams v. Superior Court, supra*, 12 Cal.3d at p. 63, fn. 5, distinguishing *Young v. Gnoss* (1972) 7 Cal.3d 18 and *Thompson v. Mellon, supra*, 9 Cal.3d 96.)

VCSC does not argue that the limitation of bingo licenses to organizations that have maintained an office in Vallejo for two years implicates the right to travel or any other fundamental right. We need not decide whether strict scrutiny is necessary, however, because even under the more relaxed rational relationship test, the residency requirement violates the guarantee of equal protection.

The trial court concluded, and the City argues, that the bingo ordinance amendments were rationally related to "the City's objective of protecting and fostering nonprofit an[d] charitable spending in the City of Vallejo." The trial court went on to find that "the amendments are consistent with the objectives to limit bingo games in the City."

We do not doubt that the objective of promoting nonprofit and charitable spending in Vallejo is a legitimate interest. To pass constitutional muster, however, the *classification* must be rationally related to the legitimate interest. (*D'Amico v. Board of Medical Examiners*, *supra*, 11 Cal.3d at p. 16; see also *Estelle v. Dorrough* (1975) 420 U.S. 534, 539 [" 'the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made" ' "].) Here, the effect of the bingo ordinance amendments is to divide charitable organizations that serve Vallejo residents into three classes. One class is comprised of organizations that have had Vallejo offices for more than two years; the second consists of those that have had Vallejo offices for less than two years; and the third consists of those that do not have Vallejo offices at all. We are unable to discern any way in which the City's purpose of promoting charitable spending in Vallejo is advanced by treating the first of these groups differently than the other two.[10]

---

[10] The same analysis applies to the other governmental interest articulated by the trial court: the objective of limiting bingo games in the City. The classifications created by the amendments bear no rational relationship to the stated goal of restricting the *number* of bingo games taking place in the City.

At oral argument, the City suggested it would be easier to ensure that bingo profits were used in Vallejo if organizations had an established, physical presence in the City. However, as counsel for the City admitted at oral argument, the record contains no evidence to support this assertion. We note that the bingo ordinance requires organizations to provide annual verifications that they continue to spend 70 percent of their bingo proceeds on charitable purposes in Vallejo in order to retain their licenses. Nothing either in the record or in common sense suggests that organizations with Vallejo offices would provide more reliable verifications than would any other organizations. Thus, we see no rational relationship between an organization maintaining a Vallejo office and the City's ability to monitor the use of the organization's bingo proceeds.

Nor do the cases cited by the City establish the validity of the amendments. In *Estate of Mears* (1979) 90 Cal.App.3d 885, 887-888, for instance, the court found no equal protection violation where a statute provided an unconditional exemption from inheritance taxation for certain property owned by residents of other states, but not for property owned by residents of foreign countries. The court found the distinction was rationally related to the state's goals of preventing estates from being subject to double taxation and maintaining the good will with other states that results from California's reciprocity provision. (*Id.* at pp. 890-891.) In *National General Corp. v. Dutch Inns of America, Inc., supra*, 15 Cal.App.3d 490, the court upheld a statute that governed the attachment of property in contract actions. The property of California residents could be attached only if the contract sued upon was unsecured, but property of nonresidents could be attached whether or not the contract was secured. (*Id*. at p. 495.) The court noted that it is more difficult to satisfy a judgment against an out-of-state debtor. Attachment provided the state with quasi in rem jurisdiction, giving the court the power to require a judgment to be satisfied out of the property attached. (*Id.* at pp. 495-496.) Finally, in *People v. Housman* (1984) 163 Cal.App.3d Supp. 43, the court concluded that an ordinance establishing preferential parking zones for city residents was rationally related to the city's social and environmental interests in encouraging reliance on car pools and mass transit, assuring convenient parking to residents who leave their cars at home during

the day, and enhancing the quality of life in the city. (*Id.* at pp. Supp. 45, 50, 52-53.) In each of the cases the City relies on, then, the challenged distinctions were rationally related to a legitimate state interest. There is no such rational relationship here.

In practice, the only interest that appears to be served by the residency requirement is the protection of Vallejo organizations, several of which organize bingo games. It has long been established that a classification cannot be used as a pretext to protect local businesses from competition. (*Helton v. City of Long Beach* (1976) 55 Cal.App.3d 840, 844 [city may not create subclasses of business engaged in the same type of activity for the purpose of imposing different tax rates if the object of the classification is "to afford an advantage to local businesses competing with outsiders"].) Thus, the residency requirement runs afoul of the prohibition against "arbitrary discrimination by a city against nonresidents." (See *County of Alameda v. City and County of San Francisco* (1971) 19 Cal.App.3d 750, 754 [holding that tax imposed only on nonresident commuters was not a reasonable method of apportioning the cost of services].)

In short, the provision limiting bingo licenses to organizations that have maintained an office in Vallejo for at least two years denies to nonresidents the equal protection of the laws. The violation cannot be cured by eliminating the two-year requirement and limiting bingo licenses simply to those organizations that currently have Vallejo offices. In either case, there is no rational relationship between the classification and a legitimate state interest.

The amendments to the bingo ordinance also limit bingo licenses to those organizations that have provided charitable services in Vallejo for two years before submitting an application for a bingo license. In addition, an organization may only receive a license if it uses at least 70 percent of the proceeds of bingo games conducted in Vallejo for charitable purposes within the City of Vallejo. VCSC did not challenge these provisions in its briefs either below or here. However, in response to questioning at oral argument, both parties asked us to decide the constitutionality of these provisions as well.

VCSC all but concedes that the requirement that an organization spend a portion of its bingo proceeds on charitable activities in Vallejo bears a rational relationship to a

legitimate state purpose. We agree. Bingo is a highly regulated activity, and bingo proceeds may only be used for limited purposes. (See Pen. Code, § 326.5, subd. (k).) A bingo operation can require a city to handle increased traffic, greater demand for parking, and other problems associated with a gambling enterprise. It is reasonable for a city to require a substantial portion of bingo proceeds to remain in the city, to benefit its residents.

However, we see no legitimate purpose to the ordinance's limitation of bingo licenses to organizations that have a two-year history of providing charitable services in Vallejo, and none has been offered. As is the case with the limitation of licenses to organizations that have had a Vallejo office for two years, this durational requirement appears to serve no interests but those of existing Vallejo organizations. As a result, it discriminates arbitrarily against nonresidents. It also discriminates against newly formed charities, even if they are entirely Vallejo-based, and thus undermines the very purpose said to be advanced by the amendments—fostering charitable spending in Vallejo.

We thus conclude that the provision of the bingo ordinance requiring a portion of the proceeds of bingo games to be used for charitable purposes within Vallejo does not offend the Constitution. However, the provisions limiting bingo licenses to organizations that have maintained an office in the City for at least two years and that have provided charitable services in the City for two years violate the equal protection guarantee.

Accordingly, we reverse the judgment of the trial court. In doing so, however, we do not decide whether VCSC is entitled to damages or the amount of any such damages.

III. DISPOSITION

The judgment is reversed. The cause is remanded to the trial court for further proceedings consistent with this opinion.

_____
RIVERA, J.

We concur:

_____
KAY, P.J.

_____
SEPULVEDA, J.